IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	Case No. 1104016644
	)	
DENNIS R. CASSON, JR.,	)	
	)	
Defendant.	)	
	)	

Date Submitted: September 9, 2011
Date Decided: September 22, 2011

OPINION

Upon Consideration of
Defendant's Motion to Suppress: ***DENIED***

Mark A. Denney, Jr., Deputy Attorney General, Department of Justice, State of Delaware, 820 N. French Street, 7th Floor, Wilmington, DE, 19801, Attorney for the State.

Thomas A. Foley, Esquire, 1905 Delaware Street, Wilmington, DE 19806, Attorney for the Defendant.

JURDEN, J.

INTRODUCTION

Before this Court is Defendant Dennis R. Casson, Jr.'s Motion to Suppress a handgun seized by the police as the result of a tip received from a past proven reliable confidential informant ("C.I."). Because the police had probable cause to believe Casson possessed a concealed deadly weapon, the Court finds that the defendant's Motion must be **DENIED**.

BACKGROUND

On April 20, 2011, a C.I. informed Detective Leary of the Wilmington Police Department that a white Lincoln Town Car parked on 17th and Church Streets in Wilmington, DE had handgun sitting in plain view on its back seat.[1] The C.I. further indicated that that two black males were waiting for the car to be opened by a locksmith.

Leary and another officer responded to the area with the intent of observing the two men. While driving to 17th and Church Streets, WILCOM[2] put out a call that two people were standing by a white car with a handgun inside it. Instead of waiting to observe the men, Leary approached the car. Contrary to the C.I.'s tip, the driver's side door of the car was open, so both officers drew their weapons for

[1] Senior probation officer Brian Victoria received a phone call from his supervisor relaying the information that the C.I. provided. Victoria then provided this information to Detective Leary.
[2] The Wilmington Police Department Communications Center.

officer safety. Unaware of the reported handgun's location because the car door had been opened, Leary ordered both men to the ground.

The State and Casson disagree as to what happened next. Leary testified on direct that after detaining Casson and his co-defendant (Percy A. Skinner), he spoke with the locksmith who purportedly opened the car door. The locksmith told Leary that he saw a gun on the backseat of the car, and that once he opened the door, Skinner covered the gun with a black sweatshirt. This made the tip Leary received partially inaccurate.

Yet, based on the locksmith's statement, Leary believed he had probable cause to arrest both Casson and Skinner for carrying a concealed deadly weapon ("CCDW").[3] Casson and Skinner were removed from the street and placed in police cars for further investigation. In order to "make the case a better case,"[4] Leary applied for a search warrant to search the car, which was granted. The search of the car produced a handgun underneath a black sweatshirt in the backseat of the car. As a result, Leary placed Casson under arrest.[5] Casson claims that Leary never spoke to the locksmith.

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[3] 11 *Del. C.* § 1442. ("A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title. Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm, in which case it is a class D felony.").

[4] Transcript at p. 13.

[5] Up until this point the State argues that Casson was only detained and not under arrest, even though police had probable cause to make an arrest. Out of concern, the Court raised the 2 hour detention rule. 11 *Del. C.* § 1902. The State responded that the 2 hour detention rule only applies where police have reasonable articulable suspicion to detain someone, not probable cause to arrest, because probable cause is a higher standard. Casson indicated, "I

THE PARTIES' CONTENTIONS

I. Casson's Contentions

Casson concedes that the tip and what Leary observed as he approached the Lincoln Town Car justified his detention for officer safety purposes.[6] Thus, Casson's issue with regard to his arrest is that the police did not find a weapon on his person, or a handgun in plain view. Casson also disputes Leary's testimony that he spoke with the locksmith.

Casson argues that without the locksmith's statement, Leary had no probable cause to arrest him, and thus Casson's arrest would have been unlawful; the fruits of which would be suppressed. Casson argues that if Leary really did speak with the locksmith, he would have had probable cause to search the car, and thus he would have searched the car immediately pursuant to the automobile exception.[7] Wary of the case law pertaining to car searches, Leary obtained a search warrant. Casson suggests that Leary obtained a search warrant because he lied about speaking with the locksmith.

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don't think it's a big issue, frankly" (Transcript at p. 46) presumably because *if* the conversation between Leary and the locksmith took place – which the defense argues it did not – there would have been probable cause to arrest.

[6] Transcript at p. 46 ("Your Honor, it seems to me that I don't really have a problem with a fastly [*sic*] moving situation where the police have the tip that there's, you know, a gun in a car. And I don't think it's unreasonable for the police to sort of you know have to worry about guessing wrong on that, that they can you know sort of let's just control the scene. So I really don't have a problem with them initially coming up without knowing the playing field and ordering the two Joe [*sic*] to the ground, even at gunpoint.").

[7] *Carroll v. United States*, 267 U.S. 132 (1925); *State v. Tatman*, 494 A.2d 1249, 1251 (Del. 1985) ("So long as the police have probable cause to believe that an automobile is carrying contraband or evidence, they may lawfully search the vehicle without a warrant") (citations omitted)); *State v. Manley*, 706 A.2d 535, 539 (Del. Super. 1996) (same) (citing *Carroll*).

II. The State's Contentions

The State argues that based upon the initial tip from the past proven reliable confidential informant and the information provided to Leary by the locksmith, Leary had probable cause to arrest Casson for CCDW. But, because Leary had concerns about searching Casson's car after already securing the area for officer safety, he decided to apply for a search warrant.

The State specifically references *Arizona v. Gant*[8] as the case that presumably caused Leary concern. In *Gant*, the United States Supreme Court held that police "may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."[9] Absent these factors, "a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies."[10]

On the other hand, the United States Supreme Court established the automobile exception in *Carroll v. United States*.[11] In *Carroll*, the Court reasoned that because cars are freely moveable, it is not always practical for the police to

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[8] 556 U.S. 332, 129 S.Ct. 1710 (2009).
[9] *Id*. at 1723.
[10] *Id*. at 1723-24.
[11] 267 U.S. 132 (1925); *see also Tatman*, 494 A.2d 1249 (Del. 1985).

secure a search warrant.[12] While the Court in *Carroll* added that police must secure a search warrant where it is reasonably practicable,[13] this requirement was abrogated later in *Pennsylvania v. LaBron*.[14] In light of the decision in *Gant*, it is reasonable to believe that Leary was legitimately concerned about whether he could validly search Casson's car without a warrant.

DISCUSSION

I. The Initial Stop

A police officer can stop and detain an individual for investigatory purposes if he has a reasonable, articulable suspicion that the individual is committing, has committed, or is about to commit a crime.[15] Courts define reasonable suspicion as the officer's ability "to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrants the intrusion."[16] To determine reasonable articulable suspicion, the Court must consider the totality of the circumstances "as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts."[17]

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[12] *Id*. at 153.
[13] *Id*. at 156.
[14] 518 U.S. 938, 940 (1996) (finding that if a car is readily moveable and probable cause exists to believe contraband is inside, the police are permitted to search the vehicle without a warrant).
[15] *Miller v. State*, 2011 WL 3524441, at*3 (Del.); 11 *Del. C.* § 1902; *see also Terry v. Ohio*, 392 U.S. 1 (1968).
[16] *Holden v. State*, 23 A.2d 843, 847 (Del. 2011) (citing *State v. Henderson*, 892 A.2d 1061, 1064-65 (Del. 2006)).
[17] *Miller*, 2011 WL 3524441, at *3; *Woody v. State,* 765 A.2d 1257, 1263 (Del.2001); *Jones v. State,* 745 A.2d 856, 861 (Del.1999) (citing *United States v. Cortez,* 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)).

Under the Fourth Amendment, a person is "seized" when the police, "by means of physical force or show of authority, communicate [ ] to a reasonable person that he [is] not at liberty to ignore the police presence and go about his business."[18]

With respect to the use of informants, police officers may use an informant's tip to establish reasonable suspicion to stop and seize an individual, provided that when the police attempt to corroborate the information, it is deemed reliable.[19] In making this determination, "the reliability of the informant, the specificity of the informant's tip, and the degree to which the tip is corroborated by independent police surveillance and information"[20] should be considered. The inclusion of "references to future actions that are not ordinarily easily predicted" is also imperative to the analysis.[21]

Here, Casson was seized by Leary when Casson was ordered to the ground at gunpoint. Casson concedes that the initial stop and detention was valid, and the Court agrees. Leary received a tip from a past proven reliable informant, and corroborated the tip with his own personal observations. Further, upon arriving at 17th and Church Streets, Leary observed that the driver's side door of the car in

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[18] *Jones v. State*, 745 A.2d at 862. (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988) (internal quotations omitted))); *see Lopez-Vasquez v. State*, 956 A.2d at 1286-87.
[19] *Miller*, 2011 WL 3524441, at *3.
[20] *Id.*; *see also Alabama v. White*, 496 U.S. 325, 331 (1980) (stating that police must assess reasonable suspicion under the totality of circumstances based upon the amount of information they have, and the reliability of the information they have).
[21] *Id.*; *see also Illinois v. Gates*, 462 U.S. 213, 245 (1983).

question was open. Given those facts, Leary justifiably stopped and detained Casson and Skinner for further investigation. Thus, the only issue left for this Court's determination is whether there was probable cause to arrest Casson.

II. Probable Cause to Arrest

An arrest is permitted where the arresting officers have "probable cause to make an arrest, that is, whenever the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that the arrestees had committed or were committing an offense."[22] When making an arrest, the officer needs to conduct a totality of the circumstances test.[23]

Leary approached the car, and realized that the driver's side door was open. Leary could not see handgun in plain view. This led Leary to believe that the defendants had either hidden the handgun, or one of the defendants had it in his possession. Before continuing his investigation, Leary spoke with the locksmith. The locksmith told Leary that he saw the gun in the backseat of the car before the black male in the grey sweatshirt (Skinner) covered it. Taking into consideration the information provided by the past proven reliable informant, the officer's

[22] *State v. Manley*, 706 A.2d 535, 538-39 (Del. Super. 1996) (citing *State v. Moore*, 187 A.2d 807 (Del. 1963)); *United States ex rel. Hawkins v. Anderson,* 343 F.Supp. 200 (D.Del.1972); *Jackson v. State,* 643 A.2d 1360 (Del. 1994).
[23] *Id*. at 539.

observations, and the statement made by the locksmith, Leary believed he had probable cause to arrest Casson.

In opposition, Casson's first argument is that Leary never had a conversation with the locksmith. On direct, Casson indicated that he kept his eyes on the locksmith the entire time, and that based on his positioning, he could see everyone and everything around him. When asked on cross-examination, however, about whether he saw the locksmith open the driver's side door, Casson conveniently indicated he did not recall. And, Casson could not recall if the driver's side door of the car was ever open. The Court is unsure how Casson – obviously an observant individual – failed to notice if the locksmith opened the car door. Detective Leary, a 12-year police veteran, received information that individuals were using a locksmith to gain access to a car that allegedly had a handgun in it. The Court finds Leary's testimony that he spoke with the locksmith credible.

The crux of Cannon's second argument is that even assuming Leary had probable cause to arrest him, Leary should have conducted a search of the car pursuant to the automobile exception[24] instead of obtaining a search warrant. Casson asserts that his Fourth Amendment rights were violated because even after the police had probable cause to arrest him, Leary held him for three hours while

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[24] *Carroll*, 267 U.S. 132 (1925).

obtaining a search warrant. In essence, Casson argues it took too long to arrest him.

The point of excluding evidence is to deter future police misconduct.[25] It does not make sense to exclude evidence seized as the result of a search where police took the extra step to make sure they had probable cause to search a vehicle by submitting an affidavit to a neutral magistrate. Although it appears that Leary could have searched the car without a search warrant, that is not a valid reason to suppress the handgun found in the car. The purpose of the automobile exception is to help the police in situations where exigency requires a search before a warrant can be obtained. Here, Leary considered the exigency extinguished when he detained Casson and Skinner. In addition, under *Gant*, a search by Leary would have only been valid if it were for evidence associated with an arrest. In this instance, Casson had not yet been arrested.

CONCLUSION

For the foregoing reasons, the defendant's Motion to Suppress is **DENIED.**

[25] *State v. Upshur*, 2011 WL 1465527, at *21 (Del. Super.). If the Court were to suppress the handgun found in this case, it would not deter police misconduct. Indeed, if the Court were to adopt Casson's argument, it might deter police from obtaining search warrants in similar situations.

IT IS SO ORDERED.

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Jan R. Jurden

cc: Prothonotary